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KRIEGSMAN & KRIEGSMAN  
30 TURNPIKE ROAD, SUITE 9  
SOUTHBOROUGH MA 01772

|   |   |                         |
|---|---|-------------------------|
| In re Application of: GUTIG, David      | : |                         |
| U.S. Application No.: 10/563,484        | : | DECISION ON PETITION TO |
| PCT No.: PCT/EP2004/007052              | : | CORRECT FILING DATE FOR |
| International Filing Date: 29 June 2004 | : | NATIONAL STAGE PAPERS   |
| Priority Date: 04 July 2003             | : |                         |
| Atty Docket No.: 82498                  | : |                         |
| For: METHOD FOR THE DETECTION           | : |                         |
| OF CYTOSINE METHYLATIONS                | : |                         |
| IN DNA BY MEANS OF CYTIDINE             | : |                         |
| DEAMINASES                              | : |                         |

This decision is issued in response to the "Petition To Accord A Filing Date Under 37 CFR 1.10(c)" filed 03 August 2006. No petition fee is required.

### BACKGROUND

On 29 June 2004, applicant filed international application PCT/EP2004/007052. The application claimed a priority date of 04 July 2003, and it designated the United States. On 20 January 2005, the International Bureau (IB) communicated a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 04 January 2006.

In January 2005, applicant filed via "Express Mail" a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee. The USPTO assigned the submission a filing date of 05 January 2006.

On 01 May 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497, the surcharge for filing the oath or declaration later than thirty months after the priority date, additional claims fees, and sequence listing materials.

On 03 August 2006, applicant filed a response to the Notification Of Missing Requirements (Deposit Account No. 11-1755 has been charged the required one-month extension fee). The response includes the required surcharge payment, an explanation asserting that the all required claims fees have been previously paid (based on applicant's small entity status), sequence listing materials, an executed declaration, and the petition to correct the filing date accorded the original national stage submission, considered herein.

## DISCUSSION

Applicant asserts that the materials filed to initiate the present national stage application were deposited with the USPS as “Express Mail” on 03 January 2006 (prior to the expiration of thirty months from the priority date).

The submission initiating this national stage application included a transmittal letter containing a certification of mailing by “Express Mail” that identified the “Express Mail” label number (EV782744041US) and the deposit date (03 January 2006). The present petition includes a copy of “Express Mail” label number EV782744041US; this label bears a “date in” of 03 January 2006. In addition, the USPS online tracking database confirms that the USPS accepted this “Express Mail” envelope on 03 January 2006.

Based on applicant’s statements in the present petition, the listing of the “Express Mail” label number on the filed transmittal letter, the “date in” on the “Express Mail” label, and the USPS tracking data, it is concluded that the materials filed by applicant to initiate the present national stage application (including payment of the basic national fee) was deposited with the USPS as “Express Mail” on 03 January 2006. Pursuant to 37 CFR 1.10(c), these materials are properly accorded a filing date of 03 January 2006. This date is prior to the expiration of thirty months from the priority date, i.e., 04 January 2006.

It is noted that, with respect to a national stage application, “[f]or most legal purposes, the filing date is the PCT international filing date” (see MPEP section 1893.03(b)). In addition, the date that will be identified as the 371(c) date on the filing receipt and the Notification Of Acceptance (Form PCT/DO/EO/903) is the date on which the requirements under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) are completed. In this case, the 35 U.S.C. 371(c) date is 03 August 2006, the date on which the executed declaration was filed, not the date on which the original national stage materials were submitted (i.e., 03 January 2006).

## CONCLUSION

Applicant’s petition under 37 CFR 1.10(c) is **GRANTED**.

The correspondence initiating the present international application, including the basic national fee, is treated as having been filed on 03 January 2006, prior to the expiration of thirty months from the priority date.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including correcting USPTO records to properly identify the filing date of the basic national fee and accompanying materials as 03 January 2006, and processing applicant’s 03 August 2006 response to the

Notification Of Missing Requirements. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 03 August 2006.



Richard M. Ross  
Attorney Advisor  
Office of PCT Legal Administration  
Telephone: (571) 272-3296  
Facsimile: (571) 273-0459